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No. 85-1779

JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE SYNANON CHURCH,

Petitioner,

v.

STUART A. BERNSTEIN, *et al.*

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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REPLY BRIEF TO BRIEF OF RESPONDENTS BERNSTEIN AND KUSHNER IN OPPOSITION

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The Brief in Opposition highlights exactly what this case is about. The confusion of the Respondents is exactly the confusion of the majority below and demonstrates that the Due Process issue arises solely as a result of the decision of the District of Columbia Court of Appeals.

The arguments before the trial court and before the Court of Appeals went to whether any alleged misconduct, including destruction of evidence, was material to the issues before the courts below. The Petitioner argued to the trial judge that any of the

alleged misconduct or missing documents were not material to the case before the court and that, therefore, the motion for sanctions before that court should be denied. The Respondents argued that the missing documents and misconduct were in fact material to the matter before the trial court. That argument was continued on appeal.

All of these arguments to both trial court and the Court of Appeals were bottomed upon the premise that no dismissal of Synanon's complaint could be ordered unless an express finding of materiality were made. At no time did Respondents dispute that materiality was a necessary factor.

For the first time in the opinion of the Court of Appeals there was a ruling, necessary to the outcome of the case in that court, that materiality is not a factor essential to the sanctions imposed. Thus, for the first time in this case—and in apparent conflict with all other authority—the materiality requirement of the Due Process Clause was ignored.

This decision that materiality is not necessary to the most severe of sanctions is of great significance. This Court is aware of the ever increasing use of sanctions by the courts throughout the nation. As was stated in the Petition for a Writ of Certiorari, no argument is made that the use of sanctions, or even the increased use of sanctions, is wrong: as long as the protections of Due Process are adhered to assiduously. This case illustrates well the dangers to the unpopular litigant when Due Process protections are brushed aside.

Respondents have objected to Petitioner's references to the Separate Opinion below. First, it should

be noted that the Separate Opinion is not a dissent, and thus must be treated differently. Second, it is an opinion by the author of the court's major opinion, and must be given weight accordingly. But even more important is the fact that it demonstrates that the issue of materiality was before the Court of Appeals and that the major opinion of that court constituted a ruling that materiality was not a factor essential to the imposition of sanctions: the very Due Process issue that is before this Court in the Petition.

Respondents also argue (Brief in Opp. p. 2) that the non-profit status of Synanon was relevant to the Complaint, since non-profit status affected the *use* of the premises under contract. However, the suit was over a contract to *buy* the premises and a misrepresentation that it could be used by a non-profit organization. Respondent Bernstein owned the building. He was not a non-profit entity. This case was bottomed on allegations that Bernstein, et al., deceived Synanon in connection with a contract to *buy* the premises. Nonprofit status is and always has been irrelevant to the ability to buy and own. If the contract had gone through—and if Synanon were, arguendo, not a non-profit organization—there would be one for-profit owner replacing another for-profit owner. If Synanon were not able to use the building, it could always choose to lease it or sell it to others. Thus, as Respondents (Brief in Opp., p. 2) and the author of the Separate Opinion make crystal clear, non-profit status is totally immaterial to the liability issue in this case.

For the foregoing reason, and those put forth in the Petition for a Writ of Certiorari, it is respectfully urged that the Petition be granted.

Respectfully submitted,

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